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SUPREME COURT, U.S.

No. 80-1583

IN THE SUPREME COURT

OF THE UNITED STATES

THE PEOPLE OF THE STATE OF COLORADO

Petitioners,

vs.

ROBERT CHAVEZ,

Respondent.

MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS, FOR FREE TRANSCRIPT AND FOR APPOINTMENT OF COUNSEL

Respondent moves for an Order: (1) granting him leave to proceed on appeal in forma pauperis, without payment of filing fees or costs, on the following grounds:

1. The Colorado state courts granted Respondent leave to proceed in forma pauperis in his state court appeal.

2. As evidenced by the attached affidavit, he is indigent and without funds with which to pay the filing fees and costs of an appeal.

Respectfully submitted,

/ Norman R. Mueller
NORMAN R. MUELLER
Special Deputy State Public Defender
1979A West Littleton Blvd.
Littleton, Colorado 80120
(303) 794-4203

Shelley Gilman
SHELLEY GILMAN
Deputy State Public Defender
1979A West Littleton Blvd.
Littleton, Colorado 80120
(303) 794-4203

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct of the attached Motion to Proceed on Appeal in Forma Pauperis was duly served upon the following parties, this 1st day of May, 1981, by depositing it in the United States Mails, postage prepaid:

Attorney General's Office
1525 Sherman Street
Denver, Colorado 80203
866-3611

Brooke Wunnicke
District Attorney
924 W. Colfax
Denver, CO 80204
297-5176
Amicus Curiae

Norman R. Mueller

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, ROBERT CHAVEZ, being first duly sworn, depose and say that I am the Respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of defending the appeal are true:

1. Are you presently employed? No, I am presently unemployed since I am incarcerated in the Colorado State Penitentiary.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, in the form of rent payments, interest, dividends, or other source? No.

3. Do you own any cash or checking or savings account? No.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.

5. There are no persons dependent upon me for support.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Robert Chavez
ROBERT CHAVEZ

STATE OF COLORADO]
] S.S.
COUNTY OF Arapahoe]

Subscribed and sworn to before me this 28 day of April, 1981.

My Commission Expires: 1-7-85.

Norma L Carpenter
Notary Public

No. 80-1583

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THE PEOPLE OF THE STATE OF COLORADO,

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ROBERT CHAVEZ,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COLORADO SUPREME COURT

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTION PRESENTED FOR REVIEW

Does unrestricted prosecutorial use of a defendant's testimonial admission of prior convictions--the impeachment use on the principal charge and the substantive use on the charge of habitual criminality--needlessly penalize the defendant for asserting his constitutional right to testify in his own defense on the principal charge?

PARTIES

The names of the parties in this case are listed in the caption of the case.

OPINION BELOW

The opinion of the Colorado Supreme Court appears as appendix A-1 to the Petition and is reported at 621 P.2d 1362 (Colo. 1981).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article two, section twenty-five of the Colorado Constitution:

> No person shall be deprived of life liberty or property, without due process of law.

The other relevant constitutional and statutory provisions are set forth in the body of the Petition and appendices A-26 and A-28 to the Petition.

STATEMENT OF THE CASE

The facts that are relevant to the legal issues in this case are clearly and completely set out in the opinion of the Colorado Supreme Court and in the Petition.

SUMMARY OF ARGUMENT

The opinion of the Colorado Supreme Court outlines a state procedure to be followed in habitual criminal cases where the defendant testifies in his own defense on the principal charge. This procedure protects the defendant's constitutional right to testify in his own behalf and his constitutional and statutory right to compel the state to prove his habitual criminality beyond a reasonable doubt. The Court's decision, as stated by Mr. Justice Quinn in his concurring opinion, "accords the defendant his constitutional due and responsibly salvages the habitual criminal statute from what otherwise would have been an irreparable constitutional infirmity" under the due process clauses of the United States and Colorado Constitutions.

ARGUMENT

THE OPINION OF THE COLORADO SUPREME COURT OUTLINES A PROCEDURE TO BE FOLLOWED IN STATE CRIMINAL TRIALS UNDER THE COLORADO HABITUAL CRIMINAL ACT WHERE THE DEFENDANT TESTIFIES IN HIS OWN DEFENSE ON THE PRINCIPAL CHARGE AND HAS NO APPLICABILITY TO THE PROCEDURES FOLLOWED IN HABITUAL CRIMINAL CASES IN OTHER STATE OR FEDERAL COURTS.

In enacting the Colorado Habitual Criminal Act, the Colorado legislature established strict statutory procedures to be followed in determining whether an individual was an habitual criminal. The legislature, however, failed to explicitly delineate the proper procedures where the

accused testifies on his own behalf. The Colorado Supreme Court's opinion remedies this legislative oversight in a manner that accords the accused his absolute due process rights to testify on his own behalf and to proof by the prosecution of all elements of the crime charged against him. Any other interpretation by the Court "would collide head-on with Article II, Section 25, of the Colorado Constitution," People v. Chavez, supra, 621 P.2d at 1368 and the Fourteenth Amendment to the United States Constitution.

The Colorado Habitual Criminal Act is a unique and peculiar state statute which applies only to Colorado state court proceedings. Similarly, the Colorado Supreme Court's interpretation and application of that statute are designed to apply only to state criminal trials. Despite the protestations of the petitioner, the Colorado Supreme Court's opinion does not have any bearing on other states or federal court proceedings and does not establish a new or conflicting rule of law. The decision merely outlines the procedure to be followed in Colorado habitual criminal cases where the accused asserts his constitutional right to testify in his own defense in the principal charge.

The Colorado Supreme Court's construction of the Colorado Habitual Criminal Act salvages the constitutional viability of the statutory scheme. Further, the Court's decision is based on both the Fourteenth Amendment to the United States Constitution and Article II, Section 25, of the Colorado Constitution.

CONCLUSION

The Colorado Supreme Court's opinion "responsibly salvages" the constitutional viability of the Colorado Habitual Criminal Act by establishing a procedure to be followed in habitual criminal trials where the accused testifies on his behalf. The opinion is based on long established judicial precedent as well as the constitutional dictates of the Fourteenth Amendment to the United States Constitution and Article II, Section 25, of the Colorado Constitution. Most importantly, the opinion merely sets forth a statutory procedure and will have no effect on other state or federal court proceedings. Since this case presents no significant federal questions requiring review by this Court, the petition for a writ of certiorari should be denied.

Respectfully submitted,

NORMAN R. MUELLER
Special Deputy State Public Defender
1979A West Littleton Blvd.
Littleton, Colorado 80120
(303) 794-4203

SHELLEY GILMAN
Deputy State Public Defender
1979A West Littleton Blvd.
Littleton, Colorado 80120
(303) 794-4203

CERTIFICATE OF SERVICE

I hereby certify that a true and correct of the attached Brief in Opposition was duly served upon the following parties, this 1st day of May, 1981, by depositing it in the United States Mails, postage prepaid:

Attorney General's Office
1525 Sherman Street
Denver, Colorado 80203
866-3611

Brooke Wunnicke
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AFFIDAVIT

I, NORMAN R. MUELLER, being first duly sworn, depose and say that I am a member of the bar of the United States Supreme Court and that I mailed the Brief for Respondent in Opposition and the Motion to Proceed in Forma Pauperis and Affidavit on May 1, 1981, by depositing it in the United States Mail, postage prepaid, to Alexander Stevas, Clerk of the United States Supreme Court, 1st and East Capitol Streets, N.E., Washington, D.C. 20543.

Norman R. Mueller
NORMAN R. MUELLER

STATE OF COLORADO]
] S.S.
COUNTY OF DENVER]

Subscribed and sworn to before me this 30th day of April, 1981.

My Commission Expires: August 22, 1984.

Bonnie Lou Todd
Notary Public